

AMENDED IN SENATE JUNE 24, 2015

AMENDED IN ASSEMBLY MAY 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1191**

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**Introduced by Assembly Member Nazarian**

February 27, 2015

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An act to ~~amend~~ amend, repeal, and add Section 66477 of the Government Code, relating to land use.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1191, as amended, Nazarian. Quimby Act: fees.

The Quimby Act, within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or to impose fees for park or recreational purposes as a condition of the approval of a tentative or parcel subdivision map, if specified requirements are met. *Existing law requires any fees collected to be committed within 5 years after the payment of the fees or the issuance of building permits on  $\frac{1}{2}$  of the lots created by the subdivision, whichever occurs later. Existing law requires any fees not committed to be distributed and paid to the then record owners of the subdivision, as specified.*

This bill would define the term “fee,” as used in the Quimby Act with regard to the expenditure of fees, to include any interest income generated from a fee charged and collected pursuant to that act. The bill would provide that these provisions are declaratory of existing law. *The bill would, until January 1, 2021, authorize a city with a population of 3 million or more to commit interest earned on or before January 1, 2016, on fees charged pursuant to that act, without regard to the date*

*the fee was collected or the date of issuance of building permits on  $\frac{1}{2}$  of the lots created by the subdivision, outside the subdivision for which the fees were collected, provided that the city holds a public hearing prior to committing the interest, and uses the interest to develop new or rehabilitate existing neighborhood or community parks or recreational facilities within the city.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 66477 of the Government Code is  
2 amended to read:

3 66477. (a) The legislative body of a city or county may, by  
4 ordinance, require the dedication of land or impose a requirement  
5 of the payment of fees in lieu thereof, or a combination of both,  
6 for park or recreational purposes as a condition to the approval of  
7 a tentative map or parcel map, if all of the following requirements  
8 are met:

9 (1) The ordinance has been in effect for a period of 30 days  
10 prior to the filing of the tentative map of the subdivision or parcel  
11 map.

12 (2) The ordinance includes definite standards for determining  
13 the proportion of a subdivision to be dedicated and the amount of  
14 any fee to be paid in lieu thereof. The amount of land dedicated  
15 or fees paid shall be based upon the residential density, which shall  
16 be determined on the basis of the approved or conditionally  
17 approved tentative map or parcel map and the average number of  
18 persons per household. There shall be a rebuttable presumption  
19 that the average number of persons per household by units in a  
20 structure is the same as that disclosed by the most recent available  
21 federal census or a census taken pursuant to Chapter 17  
22 (commencing with Section 40200) of Part 2 of Division 3 of Title  
23 4. However, the dedication of land, or the payment of fees, or both,  
24 shall not exceed the proportionate amount necessary to provide  
25 three acres of park area per 1,000 persons residing within a  
26 subdivision subject to this section, unless the amount of existing  
27 neighborhood and community park area, as calculated pursuant to  
28 this subdivision, exceeds that limit, in which case the legislative  
29 body may adopt the calculated amount as a higher standard not to

1 exceed five acres per 1,000 persons residing within a subdivision  
2 subject to this section.

3 (A) The park area per 1,000 members of the population of the  
4 city, county, or local public agency shall be derived from the ratio  
5 that the amount of neighborhood and community park acreage  
6 bears to the total population of the city, county, or local public  
7 agency as shown in the most recent available federal census. The  
8 amount of neighborhood and community park acreage shall be the  
9 actual acreage of existing neighborhood and community parks of  
10 the city, county, or local public agency as shown on its records,  
11 plans, recreational element, maps, or reports as of the date of the  
12 most recent available federal census.

13 (B) For cities incorporated after the date of the most recent  
14 available federal census, the park area per 1,000 members of the  
15 population of the city shall be derived from the ratio that the  
16 amount of neighborhood and community park acreage shown on  
17 the maps, records, or reports of the county in which the newly  
18 incorporated city is located bears to the total population of the new  
19 city as determined pursuant to Section 11005 of the Revenue and  
20 Taxation Code. In making any subsequent calculations pursuant  
21 to this section, the county in which the newly incorporated city is  
22 located shall not include the figures pertaining to the new city  
23 which were calculated pursuant to this paragraph. Fees shall be  
24 payable at the time of the recording of the final map or parcel map,  
25 or at a later time as may be prescribed by local ordinance.

26 (3) (A) The land, fees, or combination thereof are to be used  
27 only for the purpose of developing new or rehabilitating existing  
28 neighborhood or community park or recreational facilities to serve  
29 the subdivision, except as provided in subparagraph (B).

30 (B) Notwithstanding subparagraph (A), fees may be used for  
31 the purpose of developing new or rehabilitating existing park or  
32 recreational facilities in a neighborhood other than the  
33 neighborhood in which the subdivision for which fees were paid  
34 as a condition to the approval of a tentative map or parcel map is  
35 located, if all of the following requirements are met:

36 (i) The neighborhood in which the fees are to be expended has  
37 fewer than three acres of park area per 1,000 members of the  
38 neighborhood population.

39 (ii) The neighborhood in which the subdivision for which the  
40 fees were paid has a park area per 1,000 members of the

1 neighborhood population ratio that meets or exceeds the ratio  
2 calculated pursuant to subparagraph (A) of paragraph (2), but in  
3 no event is less than three acres per 1,000 persons.

4 (iii) The legislative body holds a public hearing before using  
5 the fees pursuant to this subparagraph.

6 (iv) The legislative body makes a finding supported by  
7 substantial evidence that it is reasonably foreseeable that future  
8 inhabitants of the subdivision for which the fee is imposed will  
9 use the proposed park and recreational facilities in the  
10 neighborhood where the fees are used.

11 (v) The fees are used within a specified radius that complies  
12 with the city's or county's ordinance adopted pursuant to  
13 subdivision (a), and are consistent with the adopted general plan  
14 or specific plan of the city or county. For purposes of this clause,  
15 "specified radius" includes a planning area, zone of influence, or  
16 other geographic region designated by the city or county, that  
17 otherwise meets the requirements of this section.

18 (4) The legislative body has adopted a general plan or specific  
19 plan containing policies and standards for parks and recreational  
20 facilities, and the park and recreational facilities are in accordance  
21 with definite principles and standards.

22 (5) The amount and location of land to be dedicated or the fees  
23 to be paid shall bear a reasonable relationship to the use of the  
24 park and recreational facilities by the future inhabitants of the  
25 subdivision.

26 (6) (A) (i) The city, county, or other local public agency to  
27 which the land or fees are conveyed or paid shall develop a  
28 schedule specifying how, when, and where it will use the land or  
29 fees, or both, to develop park or recreational facilities to serve the  
30 residents of the subdivision. Any fees collected under the ordinance  
31 shall be committed within five years after the payment of the fees  
32 or the issuance of building permits on one-half of the lots created  
33 by the subdivision, whichever occurs later. If the fees are not  
34 committed, they, without any deductions, shall be distributed and  
35 paid to the then record owners of the subdivision in the same  
36 proportion that the size of their lot bears to the total area of all lots  
37 within the subdivision.

38 (ii) *Notwithstanding clause (i), a city with a population of three*  
39 *million or more may commit interest accrued on or before January*  
40 *1, 2016, on fees charged pursuant to this section, without regard*

1 *to the date the fee was collected or the date of issuance of building*  
2 *permits on one-half of the lots created by the subdivision, outside*  
3 *the subdivision for which the fees were collected, provided that*  
4 *the city holds a public hearing prior to committing the interest,*  
5 *and uses the interest to develop new or rehabilitate existing*  
6 *neighborhood or community parks or recreational facilities within*  
7 *the city.*

8 (B) The city, county, or other local agency to which the land or  
9 fees are conveyed or paid may enter into a joint or shared use  
10 agreement with one or more other public districts in the  
11 jurisdiction, including, but not limited to, a school district or  
12 community college district, in order to provide access to park or  
13 recreational facilities to residents of subdivisions with fewer than  
14 three acres of park area per 1,000 members of the population.

15 (7) Only the payment of fees may be required in subdivisions  
16 containing 50 parcels or less, except that when a condominium  
17 project, stock cooperative, or community apartment project, as  
18 those terms are defined in Sections 4105, 4125, and 4190 of the  
19 Civil Code, exceeds 50 dwelling units, dedication of land may be  
20 required notwithstanding that the number of parcels may be less  
21 than 50.

22 (8) Subdivisions containing less than five parcels and not used  
23 for residential purposes shall be exempted from the requirements  
24 of this section. However, in that event, a condition may be placed  
25 on the approval of a parcel map that if a building permit is  
26 requested for construction of a residential structure or structures  
27 on one or more of the parcels within four years, the fee may be  
28 required to be paid by the owner of each parcel as a condition of  
29 the issuance of the permit.

30 (9) If the subdivider provides park and recreational  
31 improvements to the dedicated land, the value of the improvements  
32 together with any equipment located thereon shall be a credit  
33 against the payment of fees or dedication of land required by the  
34 ordinance.

35 (b) Land or fees required under this section shall be conveyed  
36 or paid directly to the local public agency which provides park  
37 and recreational services on a communitywide level and to the  
38 area within which the proposed development will be located, if  
39 that agency elects to accept the land or fee. The local agency

1 accepting the land or funds shall develop the land or use the funds  
2 in the manner provided in this section.

3 (c) If park and recreational services and facilities are provided  
4 by a public agency other than a city or county, the amount and  
5 location of land to be dedicated or fees to be paid shall, subject to  
6 paragraph (2) of subdivision (a), be jointly determined by the city  
7 or county having jurisdiction and that other public agency.

8 (d) This section does not apply to commercial or industrial  
9 subdivisions or to condominium projects or stock cooperatives  
10 that consist of the subdivision of airspace in an existing apartment  
11 building that is more than five years old when no new dwelling  
12 units are added.

13 (e) Common interest developments, as defined in Section 4100  
14 of the Civil Code, shall be eligible to receive a credit, as determined  
15 by the legislative body, against the amount of land required to be  
16 dedicated, or the amount of the fee imposed, pursuant to this  
17 section, for the value of private open space within the development  
18 which is usable for active recreational uses.

19 (f) Park and recreation purposes shall include land and facilities  
20 for the activity of “recreational community gardening,” which  
21 activity consists of the cultivation by persons other than, or in  
22 addition to, the owner of the land, of plant material not for sale.

23 (g) As used in this section with regard to the expenditure of  
24 fees, the term “fee” includes any interest income generated from  
25 a fee charged and collected pursuant to this section.

26 (h) This section shall be known, and may be cited, as the  
27 Quimby Act.

28 (i) *This section shall remain in effect only until January 1, 2021,*  
29 *and as of that date is repealed.*

30 SEC. 2. *Section 66477 is added to the Government Code, to*  
31 *read:*

32 66477. (a) *The legislative body of a city or county may, by*  
33 *ordinance, require the dedication of land or impose a requirement*  
34 *of the payment of fees in lieu thereof, or a combination of both,*  
35 *for park or recreational purposes as a condition to the approval*  
36 *of a tentative map or parcel map, if all of the following*  
37 *requirements are met:*

38 (1) *The ordinance has been in effect for a period of 30 days*  
39 *prior to the filing of the tentative map of the subdivision or parcel*  
40 *map.*

1     (2) *The ordinance includes definite standards for determining*  
2 *the proportion of a subdivision to be dedicated and the amount of*  
3 *any fee to be paid in lieu thereof. The amount of land dedicated*  
4 *or fees paid shall be based upon the residential density, which*  
5 *shall be determined on the basis of the approved or conditionally*  
6 *approved tentative map or parcel map and the average number of*  
7 *persons per household. There shall be a rebuttable presumption*  
8 *that the average number of persons per household by units in a*  
9 *structure is the same as that disclosed by the most recent available*  
10 *federal census or a census taken pursuant to Chapter 17*  
11 *(commencing with Section 40200) of Part 2 of Division 3 of Title*  
12 *4. However, the dedication of land, or the payment of fees, or both,*  
13 *shall not exceed the proportionate amount necessary to provide*  
14 *three acres of park area per 1,000 persons residing within a*  
15 *subdivision subject to this section, unless the amount of existing*  
16 *neighborhood and community park area, as calculated pursuant*  
17 *to this subdivision, exceeds that limit, in which case the legislative*  
18 *body may adopt the calculated amount as a higher standard not*  
19 *to exceed five acres per 1,000 persons residing within a subdivision*  
20 *subject to this section.*

21     (A) *The park area per 1,000 members of the population of the*  
22 *city, county, or local public agency shall be derived from the ratio*  
23 *that the amount of neighborhood and community park acreage*  
24 *bears to the total population of the city, county, or local public*  
25 *agency as shown in the most recent available federal census. The*  
26 *amount of neighborhood and community park acreage shall be*  
27 *the actual acreage of existing neighborhood and community parks*  
28 *of the city, county, or local public agency as shown on its records,*  
29 *plans, recreational element, maps, or reports as of the date of the*  
30 *most recent available federal census.*

31     (B) *For cities incorporated after the date of the most recent*  
32 *available federal census, the park area per 1,000 members of the*  
33 *population of the city shall be derived from the ratio that the*  
34 *amount of neighborhood and community park acreage shown on*  
35 *the maps, records, or reports of the county in which the newly*  
36 *incorporated city is located bears to the total population of the*  
37 *new city as determined pursuant to Section 11005 of the Revenue*  
38 *and Taxation Code. In making any subsequent calculations*  
39 *pursuant to this section, the county in which the newly incorporated*  
40 *city is located shall not include the figures pertaining to the new*

1 city which were calculated pursuant to this paragraph. Fees shall  
2 be payable at the time of the recording of the final map or parcel  
3 map, or at a later time as may be prescribed by local ordinance.

4 (3) (A) The land, fees, or combination thereof are to be used  
5 only for the purpose of developing new or rehabilitating existing  
6 neighborhood or community park or recreational facilities to serve  
7 the subdivision, except as provided in subparagraph (B).

8 (B) Notwithstanding subparagraph (A), fees may be used for  
9 the purpose of developing new or rehabilitating existing park or  
10 recreational facilities in a neighborhood other than the  
11 neighborhood in which the subdivision for which fees were paid  
12 as a condition to the approval of a tentative map or parcel map is  
13 located, if all of the following requirements are met:

14 (i) The neighborhood in which the fees are to be expended has  
15 fewer than three acres of park area per 1,000 members of the  
16 neighborhood population.

17 (ii) The neighborhood in which the subdivision for which the  
18 fees were paid has a park area per 1,000 members of the  
19 neighborhood population ratio that meets or exceeds the ratio  
20 calculated pursuant to subparagraph (A) of paragraph (2), but in  
21 no event is less than three acres per 1,000 persons.

22 (iii) The legislative body holds a public hearing before using  
23 the fees pursuant to this subparagraph.

24 (iv) The legislative body makes a finding supported by  
25 substantial evidence that it is reasonably foreseeable that future  
26 inhabitants of the subdivision for which the fee is imposed will use  
27 the proposed park and recreational facilities in the neighborhood  
28 where the fees are used.

29 (v) The fees are used within a specified radius that complies  
30 with the city's or county's ordinance adopted pursuant to  
31 subdivision (a), and are consistent with the adopted general plan  
32 or specific plan of the city or county. For purposes of this clause,  
33 "specified radius" includes a planning area, zone of influence, or  
34 other geographic region designated by the city or county, that  
35 otherwise meets the requirements of this section.

36 (4) The legislative body has adopted a general plan or specific  
37 plan containing policies and standards for parks and recreational  
38 facilities, and the park and recreational facilities are in accordance  
39 with definite principles and standards.



1     (5) *The amount and location of land to be dedicated or the fees*  
2 *to be paid shall bear a reasonable relationship to the use of the*  
3 *park and recreational facilities by the future inhabitants of the*  
4 *subdivision.*

5     (6) (A) *The city, county, or other local public agency to which*  
6 *the land or fees are conveyed or paid shall develop a schedule*  
7 *specifying how, when, and where it will use the land or fees, or*  
8 *both, to develop park or recreational facilities to serve the residents*  
9 *of the subdivision. Any fees collected under the ordinance shall*  
10 *be committed within five years after the payment of the fees or the*  
11 *issuance of building permits on one-half of the lots created by the*  
12 *subdivision, whichever occurs later. If the fees are not committed,*  
13 *they, without any deductions, shall be distributed and paid to the*  
14 *then record owners of the subdivision in the same proportion that*  
15 *the size of their lot bears to the total area of all lots within the*  
16 *subdivision.*

17     (B) *The city, county, or other local agency to which the land or*  
18 *fees are conveyed or paid may enter into a joint or shared use*  
19 *agreement with one or more other public districts in the*  
20 *jurisdiction, including, but not limited to, a school district or*  
21 *community college district, in order to provide access to park or*  
22 *recreational facilities to residents of subdivisions with fewer than*  
23 *three acres of park area per 1,000 members of the population.*

24     (7) *Only the payment of fees may be required in subdivisions*  
25 *containing 50 parcels or less, except that when a condominium*  
26 *project, stock cooperative, or community apartment project, as*  
27 *those terms are defined in Sections 4105, 4125, and 4190 of the*  
28 *Civil Code, exceeds 50 dwelling units, dedication of land may be*  
29 *required notwithstanding that the number of parcels may be less*  
30 *than 50.*

31     (8) *Subdivisions containing less than five parcels and not used*  
32 *for residential purposes shall be exempted from the requirements*  
33 *of this section. However, in that event, a condition may be placed*  
34 *on the approval of a parcel map that if a building permit is*  
35 *requested for construction of a residential structure or structures*  
36 *on one or more of the parcels within four years, the fee may be*  
37 *required to be paid by the owner of each parcel as a condition of*  
38 *the issuance of the permit.*

39     (9) *If the subdivider provides park and recreational*  
40 *improvements to the dedicated land, the value of the improvements*

1 together with any equipment located thereon shall be a credit  
2 against the payment of fees or dedication of land required by the  
3 ordinance.

4 (b) Land or fees required under this section shall be conveyed  
5 or paid directly to the local public agency which provides park  
6 and recreational services on a communitywide level and to the  
7 area within which the proposed development will be located, if  
8 that agency elects to accept the land or fee. The local agency  
9 accepting the land or funds shall develop the land or use the funds  
10 in the manner provided in this section.

11 (c) If park and recreational services and facilities are provided  
12 by a public agency other than a city or county, the amount and  
13 location of land to be dedicated or fees to be paid shall, subject  
14 to paragraph (2) of subdivision (a), be jointly determined by the  
15 city or county having jurisdiction and that other public agency.

16 (d) This section does not apply to commercial or industrial  
17 subdivisions or to condominium projects or stock cooperatives  
18 that consist of the subdivision of airspace in an existing apartment  
19 building that is more than five years old when no new dwelling  
20 units are added.

21 (e) Common interest developments, as defined in Section 4100  
22 of the Civil Code, shall be eligible to receive a credit, as  
23 determined by the legislative body, against the amount of land  
24 required to be dedicated, or the amount of the fee imposed,  
25 pursuant to this section, for the value of private open space within  
26 the development which is usable for active recreational uses.

27 (f) Park and recreation purposes shall include land and facilities  
28 for the activity of "recreational community gardening," which  
29 activity consists of the cultivation by persons other than, or in  
30 addition to, the owner of the land, of plant material not for sale.

31 (g) As used in this section with regard to the expenditure of fees,  
32 the term "fee" includes any interest income generated from a fee  
33 charged and collected pursuant to this section.

34 (h) This section shall be known, and may be cited, as the *Quimby*  
35 *Act*.

36 (i) This section shall become operative on January 1, 2021.

37 ~~SEC. 2.~~

38 SEC. 3. The amendment of Section 66477 of the Government  
39 Code made by this act does not constitute a change in, but is  
40 declaratory of, existing law. The Legislature further finds and

1 declares that any locally adopted ordinance or regulation that is  
2 consistent with the amendment of Section 66477 of the  
3 Government Code made by this act is valid.

O